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invasion of personnel security

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

Date: DEC 09 2011

Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE:

Petitioner:

Beneficiary:

[Redacted]

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen and reconsider.

The petitioner filed the nonimmigrant petition seeking to extend the beneficiary's employment under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L) as an intracompany transferee employed in a managerial or executive capacity. The petitioner, a California corporation, states that it is engaged in web design, web hosting, total internet marketing solutions, search engine optimization, and Microsoft software engineer training. It claims to be an affiliate of [REDACTED]. [REDACTED] The petitioner has employed the beneficiary in L-1A status since March of 2008 and now seeks to extend his status for three additional years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in a managerial and executive capacity and that the petitioner will comply with the terms and conditions as shown on the present Form I-129.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) provides that the affected party must file the complete appeal with the office where the unfavorable decision was made within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a USCIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the California Service Center issued the adverse decision on April 25, 2009. It is noted that the California Service Center properly gave notice to the petitioner that it had 33 days to file the appeal and properly instructed the petitioner to submit the appeal and required filing fee to the California Service Center.

The AAO notes that Form I-290B, Notice of Appeal or Motion, was initially submitted on May 28, 2009; however, the proper fee was not submitted as required by the regulation at 8 C.F.R. § 103.5(a)(1)(iii) due to the fact that the check used to pay the filing fee was returned as non-payable. The regulation at 8 C.F.R. § 103.2(a)(7)(i) provides that petitions in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable do not retain a filing date. The petitioner submitted a new check for the proper amount paid on July 2, 2009, 68 days after the director's decision was issued. Consequently, the appeal in this matter was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. Thus, the appeal was not timely filed and must be rejected on these grounds pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be

made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director of the California Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will therefore be returned to the director. If the director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.